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Hearing Date: October 18, 2023

Objection Date: August 7, 2023

Reply Date: September 21, 2023

Attorneys for Defendants

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities
LLC and the Chapter 7 Estate of Bernard L.
Madoff,

Plaintiff,

v.

NATIXIS FINANCIAL PRODUCTS LLC and
BLOOM ASSET HOLDINGS FUND,

Defendants.

Adv. Pro. No. 23-01017 (CGM)

**DECLARATION OF JOSEPH CIOFFI IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

I, Joseph Cioffi, hereby declare under penalty of perjury as follows:

1. I am a member of the bar of this Court and an attorney admitted to practice in the State of New York. I am a partner of the law firm Davis+Gilbert LLP, counsel for Natixis Financial Products LLC and Bloom Asset Holdings Fund (collectively, “Defendants”). I submit this declaration in support of Defendants’ motion to dismiss the Complaint (“Complaint” or “Compl.”) of Irving Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (“Trustee”), in this adversary proceeding.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint in this adversary proceeding, Adv. Pro. No. 23-01017 (CGM) (Bankr. S.D.N.Y. Mar. 1, 2023), ECF No. 1, with all exhibits thereto.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Second Amended Complaint in *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-04285 (CGM) (Bankr. S.D.N.Y. Feb. 28, 2022), ECF No. 274.

4. Attached hereto as **Exhibit 3** is a true and correct copy of certain defendants’ motion to dismiss the Second Amended Complaint in *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-04285 (CGM) (Bankr. S.D.N.Y. Apr. 22, 2022), ECF No. 292.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the Declaration of Patrick Littaye in *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-04285 (CGM) (Bankr. S.D.N.Y. Apr. 22, 2022), ECF No. 291.

6. Attached as **Exhibit 5** is a true and correct copy of the initial Complaint in *Picard v. Natixis S.A., et al.*, Adv. Pro. No. 10-05353 (CGM) (Bankr. S.D.N.Y. Dec. 8, 2010), ECF No. 1-1, without exhibits.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the Proposed Amended Complaint in *Picard v. Natixis S.A., et al.*, Adv. Pro. No. 10-05353 (CGM) (Bankr. S.D.N.Y. Dec. 28, 2018), ECF No. 170-1.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the Settlement Agreement between the Trustee and Alpha Prime Fund Limited (“Alpha Prime”) in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. June 23, 2022), ECF No. 710-2 (“Alpha Prime Settlement Agreement”).

9. Attached hereto as **Exhibit 8** is a true and correct copy of the order approving the Alpha Prime Settlement Agreement in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. July 20, 2022), ECF No. 715.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the Trustee’s motion to approve the Alpha Prime Settlement Agreement in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-1364 (CGM) (Bankr. S.D.N.Y. June 23, 2022), ECF No. 710 (“Alpha Prime Rule 9019 Motion”).

11. Attached hereto as **Exhibit 10** is a true and correct copy of the Partial Settlement Agreement between the Trustee and Alpha Prime in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. Feb. 12, 2018), ECF No. 491-1.

12. Attached as **Exhibit 11** is a true and correct copy of email correspondence received from counsel to the Trustee with respect to the Alpha Prime Settlement Agreement (Apr. 7, 2023).

13. Attached hereto as **Exhibit 12** is a true and correct copy of the Trustee’s Agreement with Primeo Fund and Herald Fund SPC, each by its liquidators, in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. Nov. 17, 2014), ECF No. 338-2.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the Trustee's Settlement Agreement with Herald (Lux) SICAV, by its liquidators, in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. Dec. 23, 2014), ECF No. 352-1.

15. Attached hereto as **Exhibit 14** is a true and correct copy of the Declaration of Irving H. Picard in support of the Alpha Prime Rule 9019 Motion in *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (CGM) (Bankr. S.D.N.Y. June 23, 2022), ECF No. 710-4.

16. Attached hereto as **Exhibit 15**, is a true and correct copy of the Trustee's Settlement Agreement with Magnify, Inc., Yeshaya Horowitz Association, Premero Investments Ltd., Strand International Investments Ltd., Express Enterprises Inc., and Yair Green in *Picard v. Magnify, Inc.*, Adv. Pro. No. 10-05279 (SMB) (Bankr. S.D.N.Y. Sept. 4, 2020), ECF No. 193-2, without exhibits.

17. Attached hereto as **Exhibit 16**, is a true and correct copy of the Trustee's Settlement Agreement with Kingate Euro Fund, Ltd. and Kingate Global Fund, Ltd., by their liquidators, in *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (SMB) (Bankr. S.D.N.Y. July 17, 2019), ECF No. 413-2.

18. Attached hereto as **Exhibit 17** is a true and correct copy of the Trustee's Agreement with Mount Capital Fund, Ltd. and Mount Capital Asset Subsidiary Limited, by their liquidators, in *Picard v. Mount Capital Fund Ltd.*, Adv. Pro. No. 10-05123 (BRL) (Bankr. S.D.N.Y. Aug. 31, 2011), ECF No. 14-2.

19. Attached hereto as **Exhibit 18** is a true and correct copy of the Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Natixis S.A., Bloom Asset Holdings Fund, and Tensyr Limited in *Picard v. Natixis S.A., et al.*, Adv. Pro. No. 10-05353 (CGM) (Bankr. S.D.N.Y. June 27, 2015), ECF Doc. No. 102.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
and correct.

Dated: May 22, 2023
New York, New York

/s/ Joseph Cioffi
Joseph Cioffi